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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/629,996

07/29/2003

Shirley M. Benson

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08/30/2006

SHIRLEY BENSON

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DREXEL, NC 28619-1641

EXAMINER

DEMILLE, DANTON D

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/629,996

Applicant(s)

BENSON, SHIRLEY M.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21,22,25-30 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21,22,25-30 and 34-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed.

Applicant has added the limitation in claim 30 that the device further comprises “a tension step-down”. It is not clear where in the specification is support for such structure. Claim 29 has already claimed an elongated cord wherein the mother’s end comprises a handhold knob, a pair of v-arms and a wrist loop at each end of the v-arms. It is not clear what further structural limitation has been added by “a tension step-down”.

Claim Objections

Claims 30, 35-37 are objected to because of the following informalities: claims 30 and 37 depend upon themselves and therefore are viewed as incomplete. Claims 35 and 36 depend on following claims and not on a preceding claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29, 30, 34, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Balne (3,068,002).

In Figure 7, Balne shows a device capable of functioning as a birthing aide to reduce the duration of the active labor process. Although the claimed functionality is not disclosed in the reference, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The birthing aide consists of an elongated cord (12'), an end attached to a stationary object, and an end terminating in a pair of handle members (16'). The handle members are fastened to the end of rope (12') by rope 14' by means of loop 79, which forms loops 80 upon attachment, hereon referred to as the mother's handhold unit. The length of rope 12' can be adjusted by disengaging the lock in box apparatus 84.

Regarding claim 29, the terminus of rope 12' comprises a mother's end comprising a handhold knob (loop 80), a pair of v-arms 14' terminating in a wrist loop 16'. The remaining terminus comprises the aide's end and comprises at least one loop (see fig 10). This loop is attached to element 84 which is secured to a surface, an arrangement that will provide resistance to the pulling force on the opposing end. A user is capable of inserting her wrists into said wrist loops, grasping the birthing aide in the vicinity of said handhold knob and pulling against the source of resistance. This motion will tighten the user's abdominal muscles and effectively increase her uterine contractions.

Regarding claim 30 as understood, it would appear the loops 30 of the instant invention provide the claimed "tension step-down" and therefore would appear that the loops 80 of Balne

would also comprehend the claimed tension step-down. It is not clear how this language defines over the loops of the prior art.

Regarding claim 31, the pulling of rope 12' from the stationary object will provide an equal but opposite pulling force away from the mother. The identical positioning of the torso at an angle to open the birth canal will be facilitated by this arrangement.

Regarding claims 32-34, the mother's end and the aide's end are both made from the same rope material as the elongated cord 12'(col 2. lines 9, 12). Furthermore, handhold 80 is also made from this rope material and is inherently braided. Handhold protuberance.

Regarding claim 35, a rope can be made from either natural or synthetic fibers, or a mixture of the two. Therefore the rope of Balne must fall into one of these categories.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 22, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freymann (2,009,655) in view of Balne.

Freymann discloses an obstetric device and teaches a method for lessening the duration of the active labor and pushing stages of childbirth. The device comprises an elongated cord 12 having a mother's end 11 comprising a handhold 5 and an aid's end attached to a stationary object. Wrist loops 6 are provided as well. A user's wrist is inserted into the said wrist loops and

the handhold is grasped. When a user pulls on this elongated cord via the handhold, the stationary object will exert an equal but opposite force, effectively increasing the contractions of the uterus and abdominal muscles.

Regarding claims 21 and 22, Freymann lacks a pair of v-arms which terminate in a wrist loop. Such structure is taught by Balne who discloses a device capable of performing the recited function. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Fig 1 of Balne shows an apparatus that comprises said v-arms 14 terminating in wrist loops 16, as well as an aid's end 56, 32. It would have been obvious to one of ordinary skill at the time the invention was made to join cord 12 of Freymann into a pair of rope v-arms as taught by Balne so that pulling forces would be uniform on one central cord.

Regarding claim 23, the handhold of Freymann is a handlebar (see fig 4).

Regarding claims 24 and 25, the elongated cord 12 of Balne is made of rope (col 2 line 9). It would have been obvious to one of ordinary skill at the time the invention was made to provide the apparatus of Freymann with a cord made from rope in order to afford the tensile advantages associated with rope.

Regarding claim 26, a rope can be made from either natural or synthetic fibers, or a mixture of the two. Therefore the rope of Balne must fall into one of these categories.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freymann in view of Balne as applied to claims 21-26 as applied above, and in further view of Davidson (5,674,159).

Both Freymann and Balne lack rope made of synthetic fiber selected from listed group. Davidson discloses a device comprising two wrist loops 100, an elongated rope 200, a handgrip 300 and an aide's end 400. On page 8, line 44 Davidson details the specification of his rope and states that it is to be manufactured from polypropylene, a form of polyolefin and a synthetic fiber (see logic in previous correspondence). It would have been obvious to one of ordinary skill at the time the invention was made to provide the birthing device of Balne with a rope made of the synthetic fiber polyolefin to decrease production cost and time.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freymann in view of Balne as applied to claims 21-26 above, and in further view of Goodwin (2,951,702).

Both Freymann and Balne lack rope made from natural fiber selected from the listed group. Goodwin discloses a device comprising a handhold 34, elongated cord 30 and a looped aide's end 20 (see fig 3). Elongated cord 30 is said to be made of cotton rope, a natural fiber. It would have been obvious to one of ordinary skill at the time the invention was made to provide the birthing device of Freymann in view of Balne with a rope made of the natural fiber cotton to provide cotton's unique properties of strength, durability, and absorbency.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balne in view of Davidson (5,674,159).

Balne lacks rope made of synthetic fiber selected from listed group. Davidson discloses rope made from polypropylene, a form of polyolefin and a synthetic fiber (see logic in previous correspondence). It would have been obvious to one of ordinary skill at the time the invention was made to provide the birthing device of Balne with a rope made of the synthetic fiber polyolefin to decrease production cost and time.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balne in view of Goodwin (2,951,702).

Balne lacks rope made from natural fiber selected from the listed group. Goodwin discloses an elongated cord 30 made of cotton rope, a natural fiber. It would have been obvious to one of ordinary skill at the time the invention was made to provide the birthing device of Balne with a rope made of the natural fiber cotton to provide cotton's unique properties of strength, durability, and absorbency.

Response to Amendment

The drawings remain objected to because they still lack subject matter claimed in the apparatus claims.

Applicant argues that the Examiner is misapplying *Ex parte Masham* because the claims of the present application are not directed to the apparatus. Applicant argues that independent claims 21 begins: A method for lessening the active labor and pushing stages of childbirth” The Examiner respectfully disagrees because method claims 21, 22, 25-28 are not rejected under 35 USC 102(b) in view of Balne but in fact Balne is applied to apparatus claims 29, 30, 34-37. Therefore *Ex parte Masham* has been properly applied. The apparatus is held unpatentable when a new use for an existing apparatus is found.

Balne discloses all of the positive structural limitations recited in the claims. Although his apparatus is intended to function as an exercise device, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The fact that Balne does not intend to

use his device to aide birthing does not disregard its ability to perform such a function.

Furthermore, the specification stated that the apparatus imparts a motion on the pregnant user similar to that of a crunch to increase inter-abdominal pressure. The crunch is a well-known exercise for the conditioning of the abdominal muscles. Therefore Applicant's arguments that the Examiner has misapplied *Ex parte Masham* is misapplied.

Applicant argues that Freymann discloses a restraining device and not a birthing aide for "lessening the duration of the active labor and pushing stages of child birth." As applicant has pointed out the Freymann device is "for use in pairs to be held in the hands of a patient while experiencing pains incident to child birth" column 1, lines 2-4. Freymann goes on further to teach the device is for "operating to stabilize and assist the physical force exerted by the arms and body while pulling rearwardly upon the straps, as an aid in effecting delivery." The device is clearly an aid in effective delivery of childbirth by assisting the mother in active labor to help during pushing stages. It is not clear how applicant can disregard the teaching of Freymann. The Freymann device is performing the same function as applicant's device. The only difference is the means to which the opposite end is fixed to the source of resistance. As taught by Freymann there is no criticality to what the opposite end is fixed. It can be the surgeon's operating table, labor bed or other support on which the patient reclines. The same is true for applicant's invention. Applicant's specification states that "[o]ptionally, the loop can be connected to a stationary object that would resist pulling by the mother at the mother's end (20) of the invention." Clearly the other end of the device can be modified dependent on practical considerations of exactly what the source of resistance is intended to be.

Balne teaches a method for a user to perform a similar form of exercise using the stomach muscles by grasping two ends of a rope and pulling compressing the stomach muscles. With one end of the rope attached to a source of resistance the user grasps the two loops at the other end of the rope and contracts the stomach muscles. Balne teaches that the two handhold loops are connected to a central portion by a pair of v-arms. Balne teaches an equivalent way of supporting the two handhold loops. Freymann teaches two loops supported independently to the source of resistance and Balne teaches an obvious equivalent way of doing the same thing but tying the two loops together using v-shaped arms to a central support element. Thus Balne has used only one main support element thereby reducing the amount of material used and having only one point of support thereby equalizing the resistive force. Therefore, it would have been obvious to one of ordinary skill in the art to modify Freymann to use a pair of v-arms to form the rope as taught by Balne as an obvious equivalent way of doing the same thing having only one point of attachment reducing the amount of material used and equalizing the resistive force from only one point.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

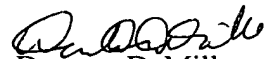
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

28 August 2006


Danton DeMille
Primary Examiner
Art Unit 3764